

CALIFORNIA COASTAL COMMISSION

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October 31, 2007

Affirmative Agricultural Easement Workshops: A Summary

On November 30, 2005 and January 18, 2007 the California Coastal Commission staff held public workshops to address the use of affirmative agricultural easements. The workshops were intended to encourage a dialogue among government agencies, non-profit organizations and farmers about the best way to protect agricultural land and agricultural production through the use of affirmative agricultural easements. The presenters and ensuing discussions covered the context and general mechanics of affirmative agricultural easements, alternative ways to structure such easements, and the potential benefits, limitations, and cautions of using them. Following is a summary of the main points raised during these two workshops with links to additional materials.

➤ *Why Consider Affirmative Agricultural Easements?*

Traditional agricultural easements restrict future development in agricultural areas so that the land is available to continue to be farmed. Although these easements are intended to protect the agricultural use of land, they often only assure that the subject land stays in open space. This is because traditional easements do not contain mechanisms that require land to remain in active agricultural *production*.

Resource agencies and non-profit organizations are increasingly concerned about this issue because of the growing popularity of using farmland for solely residential purposes. For example, a non-farmer buys a farm and builds or lives in a house on the site but does not have any interest in continuing to farm the remainder of the land. Or, even if there is an initial interest, it may not be sustained over time, especially as the property changes ownership. These homes and associated development pressures in rural areas not only limit the total amount of land in agricultural production, but also increase the cost of land, so that new farmers are unable to purchase property, and existing farmers may have economic incentives or otherwise be encouraged to sell their land to developers for non-agricultural development.

The trend to use agricultural lands for non-agricultural development and particularly residential development raises a significant issue for the Coastal Commission. This is because of the mandate under Section 30241 of the California Coastal Act to ensure that the maximum amount of prime agricultural land is maintained in agricultural production. Local governments with significant agricultural areas must also address this issue because they have Local Coastal Program policies that reflect the Coastal Act mandate to protect agricultural lands. In the past even if regulators implementing the Coastal Act or LCPs required a traditional agricultural easement over the portion of farmland not used for residential purposes, there is no guarantee that such land will actually be farmed. Affirmative agricultural easements attempt to address this

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problem by requiring that agricultural lands be not only protected but affirmatively made available for farming.

➤ *What are Affirmative Agricultural Easements?*

Affirmative agricultural easements include provisions that require the restricted land to be actively farmed. Affirmative easements can be required by regulatory agencies as conditions of development, or they can be established voluntarily by landowners who want to preserve the agricultural viability of their land. For example, the Deed of Agricultural Conservation Easement recorded in conjunction with California Coastal Commission permit A-2-SMC-04-009 for a new residence, requires that the owner either “engage in good faith in agriculture at a commercial scale,” or lease the land to a farmer.

➤ *How are Affirmative Agricultural Easements Written?*

There are various options for crafting an affirmative easement, some of which are outlined in a recent California FarmLink document. For example, the easement could identify specific crops for cultivation. Affirmative easements also provide an opportunity to assure that future agricultural practices are environmentally-sustainable by imposing environmental standards, such as organic farming, wildlife habitat restoration, or water quality protection. Affirmative easements can also include open space, scenic or historic preservation requirements in areas where these resources could potentially bolster long-term agricultural viability. As with the example above, the Coastal Commission has adopted requirements that the owner of an agricultural parcel provide adequate water supply and other necessary infrastructure and improvements to sustain the agricultural viability of the property. Every case will have its own circumstances that need to be specifically addressed. However, all easement provisions related to the use or non-use of agricultural land should be drafted thoughtfully to allow for the economic viability of farming throughout changing economic, natural resource, and infrastructure conditions. If an easement is too restrictive, there may not be any farmers willing to farm the land, or, the easement may require future amendments that could re-open negotiations, potentially threatening the intent of the original easement.

➤ *What Are Some Concerns with Using Affirmative Agricultural Easements?*

Workshop participants raised several concerns about the use of affirmative agricultural easements, including:

- the lack of sufficient funding for monitoring and enforcement of easement conditions;
- the effect of potential court challenges given the newness of this type of easement;
- the difficulty in appraising affirmative easements for property valuation purposes, and
- the long-term viability of the easement through future changes in the economy, natural resources and infrastructure.

Affirmative Agricultural Easement Workshops: A Summary

➤ *The Future of Affirmative Agricultural Easements*

Affirmative agricultural easements have the potential to offset the negative effects of land speculation and rural development pressures on California's farmland. The demand for these easements is growing, and best practices will naturally surface through their continued use. Coastal Commission staff continues to encourage the use of affirmative agricultural easements as a way to offset the negative effects of land speculation and rural development pressures on California's farmland.

Workshop Presentations

The first workshop included the following presentations:

- Introductory Remarks by Peter Douglas, Executive Director, California Coastal Commission
- Chris Kern, District Manager, California Coastal Commission
Farmland Protection under the California Coastal Act
- Steve Schwartz, California Farm Link
The Affirmative Agricultural Easement: What is it? What does it look like? How do we implement it?
- Alex Hinds, Marin County Community Development Agency
Getting to Yes: Local Governmental Strategies to Secure Affirmative Agricultural Easements
- Jerry Thomas, Open Space Alliance
Steve Pederson, High Ground Organics
A Farmers Perspective on Affirmative Agricultural Easements
- Chuck Tyson, California Department of Conservation Farmland Conservancy Program
Funding Affirmative Agricultural Easements

The second workshop was co-hosted by California Farm Link, and featured the following presentations:

- Welcome and Introductions, Reggie Knox, California FarmLink
- Background, Coastal Commission's Interest in Affirmative Easements, Charles Lester, Deputy Director

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- Potential for Affirmative Easements to Protect Farmland and Promote Small Ag Businesses in California, Steve Schwartz, California FarmLink
- The Open Space Alliance Model, Jerry Thomas, Thomas Farms
- Farmer Perspective, Steve Pedersen with Laura Kumerer, High Ground Organics
- Monterey County Agricultural and Historical Land Conservancy Experience with Affirmative Easements, Sherwood Darington

See further useful references on agricultural easements.

California FarmLink

✠ Services to Farmers

- ◆ Database for linking aspiring and retiring farmers
- ◆ Information on resources
- ◆ Technical assistance
- ◆ Structuring deals to facilitate farm transfers
- ◆ Equity Building Programs

Mission

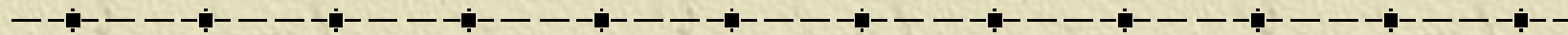


To build family farming and conserve farmland by linking aspiring and retiring farmers; and promoting techniques and disseminating information that facilitate intergenerational farm transitions

Aging of California's Farmer Population

- Number of farm operators under 35 years old declined 46% between 1992 and 2002
- Approximately 30% of California Farmers are over 65 years old

Who Are Our Sources of Easements



- ◆ Non Farming Landowners who donate for tax or altruistic purposes
- ◆ Farm owner operators of retiring age
- ◆ Beginning farmers (simultaneous transactions)
- ◆ Landowners meeting mandatory mitigation requirements

How do Easements Fit into a Farmlink?

- ✦ A donated easement can offset taxes do to lease income
- ✦ Sale of an easement can lower the cost of the property at the time of sale in order to help ensure someone can qualify for a loan
- ✦ Sale of an easement can help an aspiring farmer get their downpayment together

Standard Language:

Landowner Can Not Develop

-
- ✦ Development usually restricted or forbidden
 - ✦ Out buildings restricted in number and location
 - ✦ Limit the size of single family house to ensure farmer priced out of the market

Public Benefit

✦ Open Space

View sheds, community separators,
supports smart growth strategies,

✦ Potential to boost food production, food
security, economic multipliers

✦ Potential to facilitate entry of beginning
farmers

Name that Mission Statement...

✱ “Dedicated to the protection of working farms”

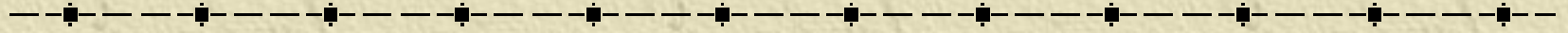
✱ “encourages public policies that support and enhance agriculture”

✱ “...for the preservation and enhancement of agricultural lands”

Why Focus on Affirmative Language?

- ✦ Desire to ensure productive operation not “gentleman” farmer or open space
- ✦ Investors want to know they are supporting food production not a rural residence
- ✦ In the long-term easement restricted land values can still exceed farmer’s ability to finance
- ✦ Potentially creates access to significant amounts of land through leases for food production with local economic multipliers

What Does It Look Like?



Basic Agricultural Conservation Easement

Add:

- ✦ Demonstrated production at min. levels
- ✦ Cultivation/Production/Husbandry Practices
- ✦ Contingencies for owner who does not
or can not farm

Affirmative Clauses Calling for Continued Farming

Affirmatively require that activities be maintained on a farm or ranch.

- ◆ Owner farms or leases to a farmer
- ◆ Specific Crops
- ◆ Specific cultivation techniques
(i.e. organic)

Sample Easement with Affirmative Clause

- ✦ Looked at known California models
- ✦ Qualified attorney reviewed
- ✦ Peer review, changes made
- ✦ A work in progress

Language for Farming

- ✦ Portion of income comes from farming
- ✦ Productivity comparison to county average

Further Restrictions to Consider

✦ Part-time farmers?

- ◆ Someone gets 51% of their income on farm

✦ Not a focus on education, agri-tourism or non-profit mission but rather production for food

✦ Minimum percentage of acreage to be farmed or leased

Implementation

- ✦ Start with your basic easement add borrowed affirmative language to meet goals
- ✦ Training monitoring staff as needed
- ✦ Connect non-ag. landowners with resources to find lessees
- ✦ Consider remedies

Potential Challenges with Affirmative Language

- ✠ Easement professionals/judges less familiar with language
- ✠ Monitoring (i.e. production, tax records)
- ✠ Enforcement
(how long does landowner have to find a lessee)
- ✠ Training may be required
- ✠ Establishing due diligence in non-ag. Landowner seeking then cooperating with a lessee
- ✠ Requirements on organic could be controversial

Importance of Multiple Uses

Recommend that easements be drafted to describe all applicable multiple purposes that can support an easement (ag., scenic beauty, open space, historic protection).

All conservation values can then be protected if enforcement is needed.

Advantages with Affirmative Clause

- ✦ Provide farmer a clearer idea of the legacy they leave;
- ✦ Encourages easement holders to facilitate farm transitions;
- ✦ Requirement for organic etc. may advance landtrust or public agency's larger mission
- ✦ Creates access to land for food production

Continuing the Discussion

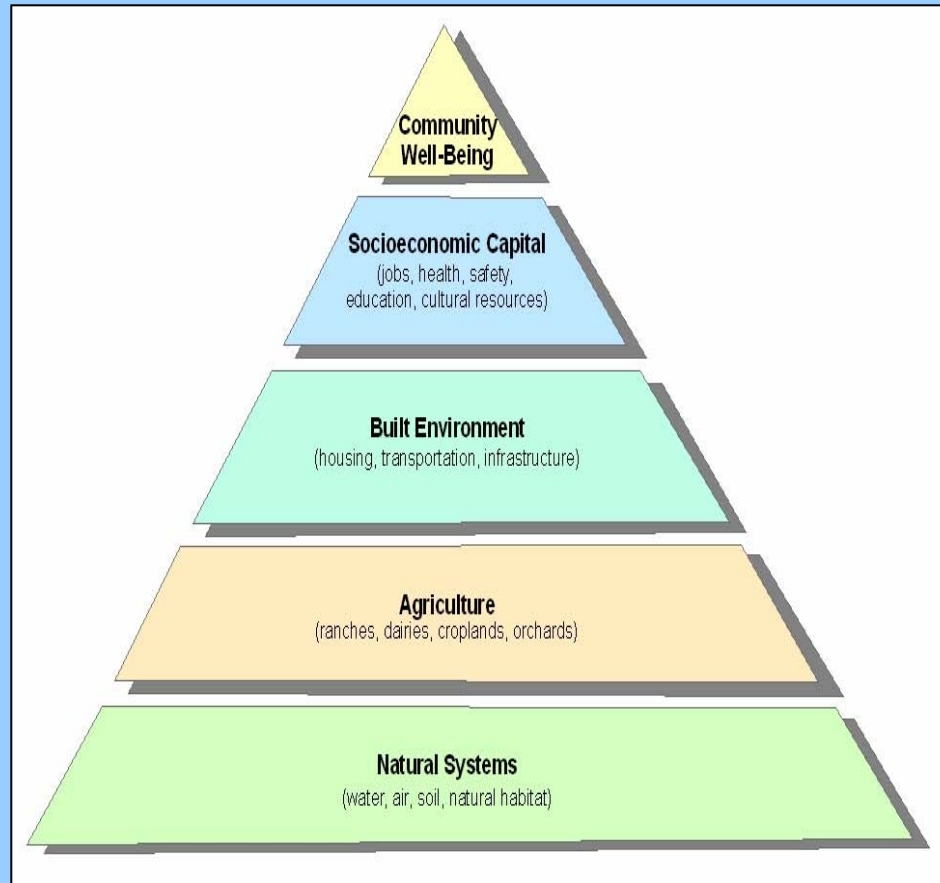
- ✦ Summarize concerns
- ✦ Collaborate to develop alternative ways to address
- ✦ Revise sample affirmative easement language

Getting to Yes: Local Governmental Strategies to Secure Affirmative Agricultural Easements

November 30, 2005



Marin Countywide Plan's Framework for Sustainability



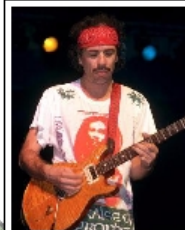
Cultural Landscape of Marin County



Anne Lamott, writer



Charles Schwab, CEO



Carlos Santana,
musician



Frank Lloyd Wright,
architect



Sim Van der Ryn,
architect



Gary Fisher, bike innovator



Peter Coyote, actor



George Lucas (with friend), filmmaker



Grateful Dead, band



Bonnie Raitt, musician



Metallica, band



Hyatt, hotel

MAP 2-20



The Dilemma



Can local agriculture remain viable in light of ag gentrification?

- Low profit margins make agriculture a difficult business.
- Residential demand is threatening agriculture.
- Just preserving open space is not enough ...



Why is this important?

Preserving existing agricultural land and operations resources:

- Contributes to healthy economy and community.
- Reduces the traffic, environmental, and quality-of-life impacts of importing goods.
- Often provides healthier food choices.
- Reinforces the cultural heritage and aesthetic qualities of the local working landscape.



What are the desired outcomes?

- Preserve agricultural lands and resources
- Encourage contractual protection
- Facilitate agricultural conservation easements
- Maintain the agricultural land base
- Encourage owners of agricultural lands to continue ranching and farming, develop new, compatible ag uses, and/or lease to existing agricultural operators



How will results be achieved?

- Limit residential building size
- Distinguish between existing agricultural producers and agricultural estate proposals
- Require agricultural production and stewardship plans
- Look for win/wins



- Secure conservation easements
- Encourage merger of parcels on lands protected by easements
- Request that at least 90% of the useable land will remain in production



- Cluster development on 5% of the land
- Standardize ag conservation easements
(e.g., use MALT or similar land trust easements as a template)
- ID stewardship activities to protect ag and natural resources



Agricultural Production and Stewardship Plans should demonstrate that:

- The long term agricultural use of the property will be preserved
- Agricultural infrastructure, such as fencing, processing facilities, marketing mechanisms, agricultural worker housing or agricultural land leasing opportunities have been established or will be enhanced



- Agricultural uses proposed in connection with the residence are appropriate to the site
- Sound land stewardship, such as Marin Organic Certification, riparian habitat restoration, water recharge projects, and erosion control measures, have been or will be enacted



- Dedication or sale of perpetual agricultural conservation easements may be voluntarily offered to qualify for a larger home.
- The Agricultural Production and Stewardship Plan may be waived when the proposal involves small homes and long-time agricultural production.

Other Issues



- Protection in perpetuity of ag values
- Baseline data requirements
- Ag worker housing
- Natural resource protection, development, and ag production areas
- Ongoing agricultural use requirements



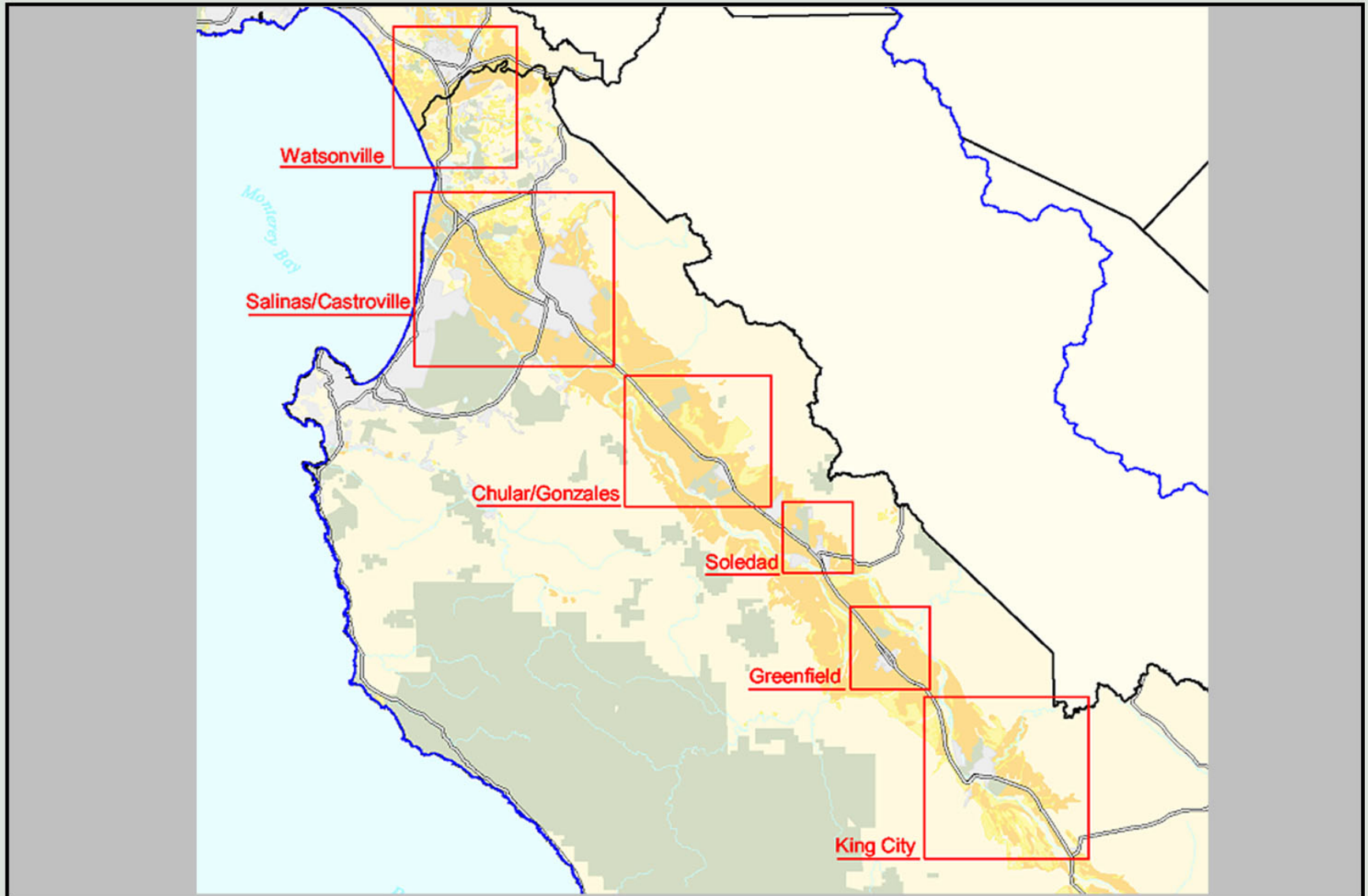
Affirmative Agricultural Easements

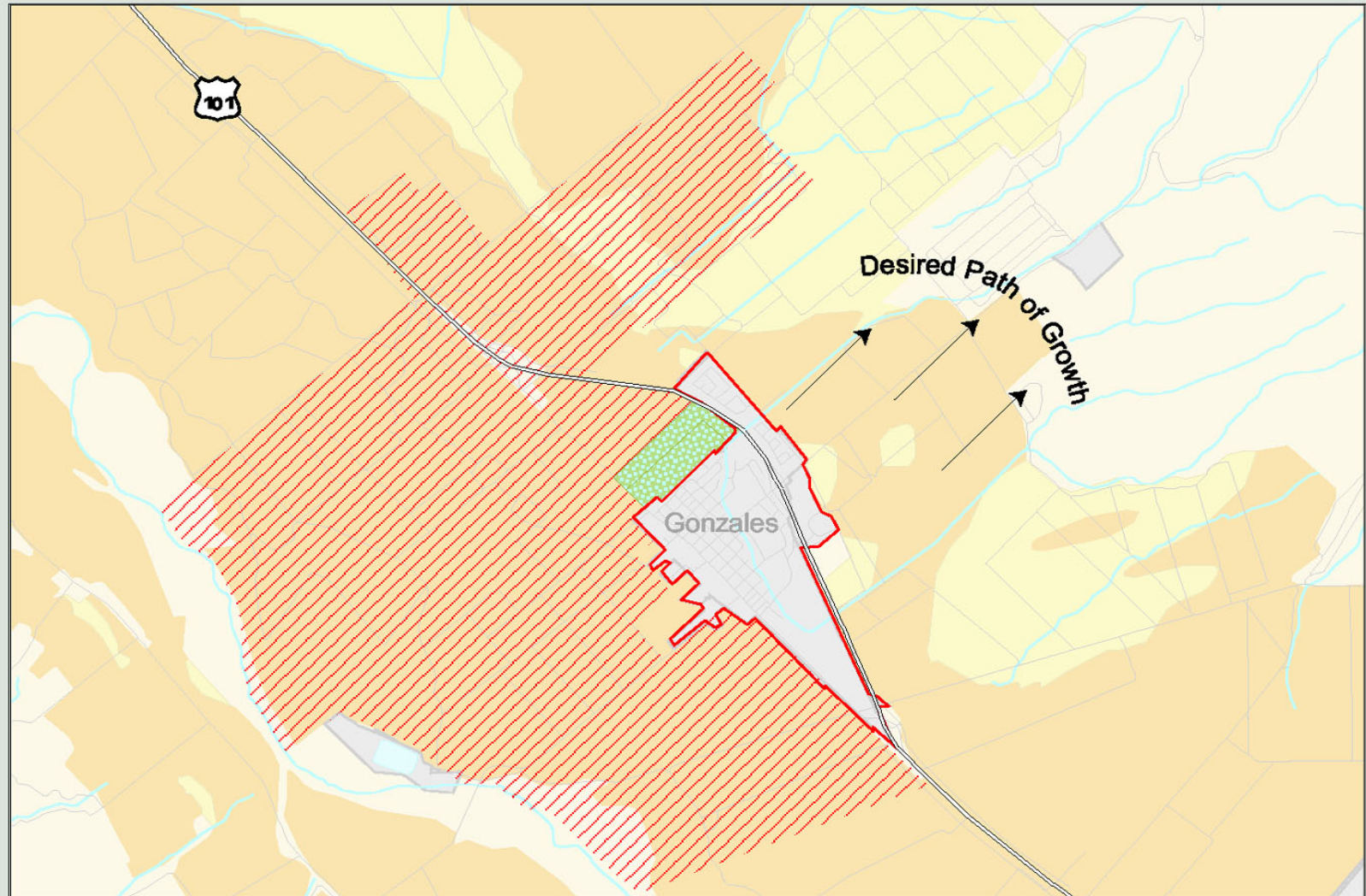
Charles Tyson, Manager
California Farmland Conservancy Program
Department of Conservation
November 30, 2005

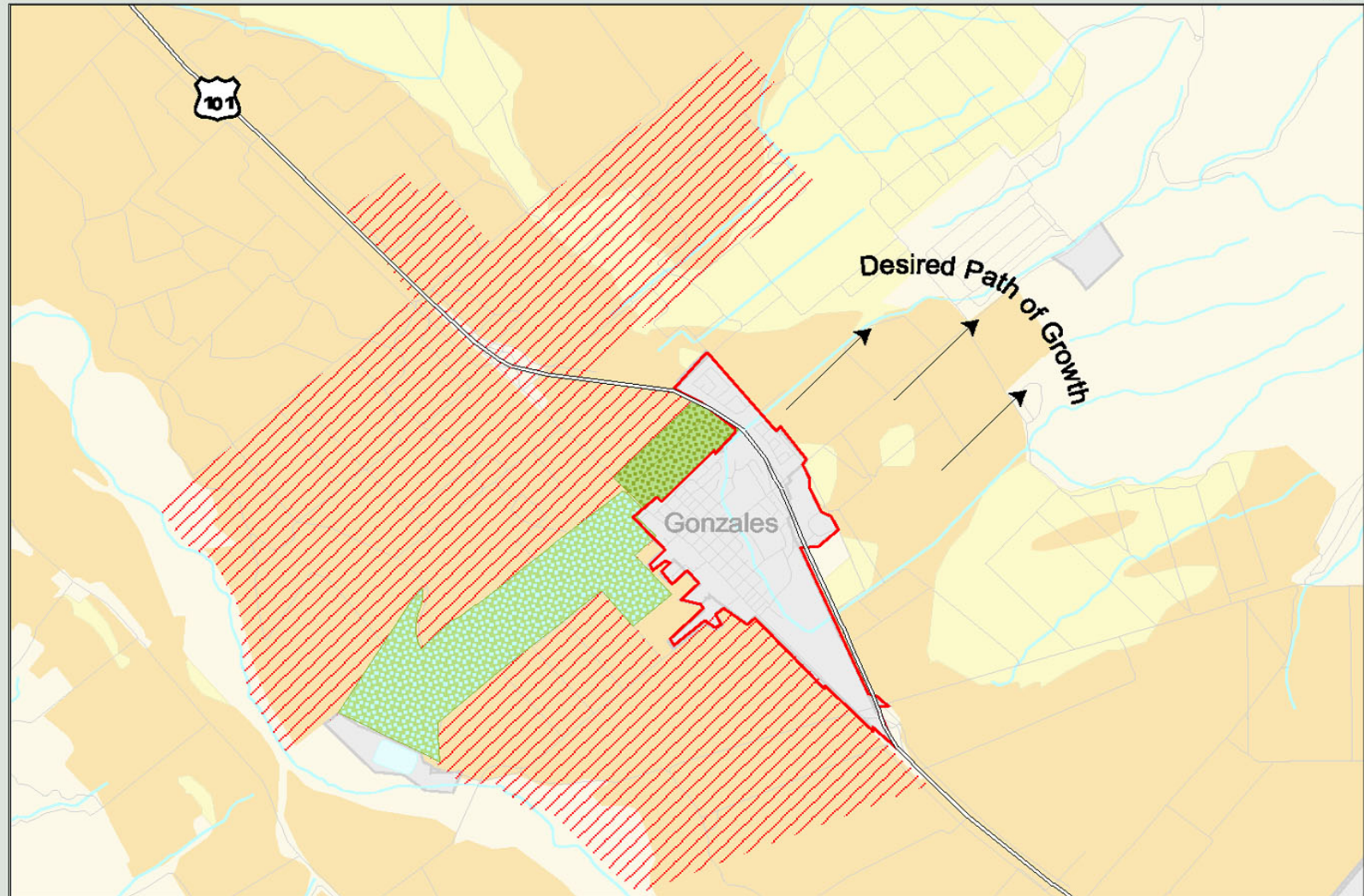


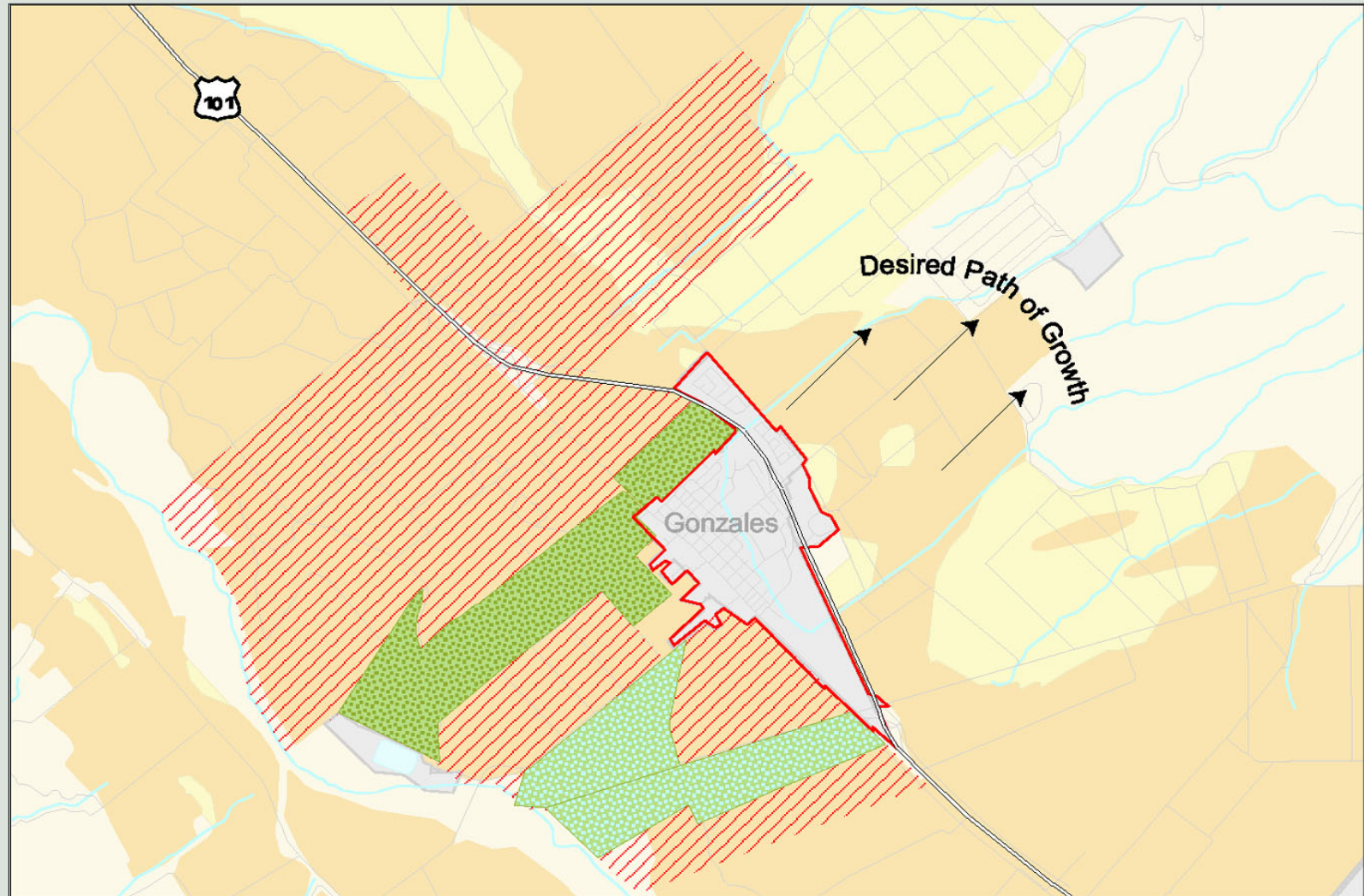
Monterey County

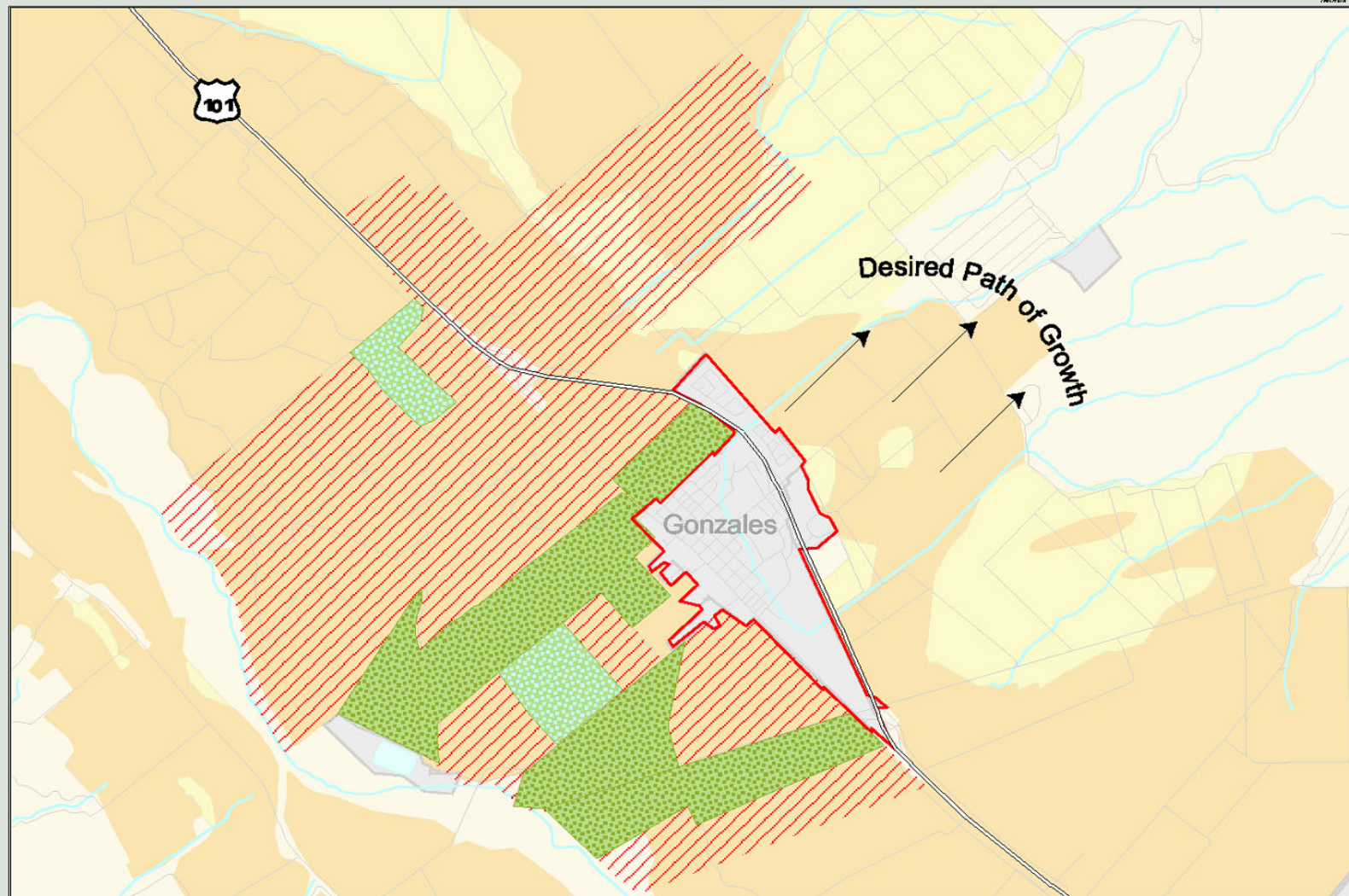


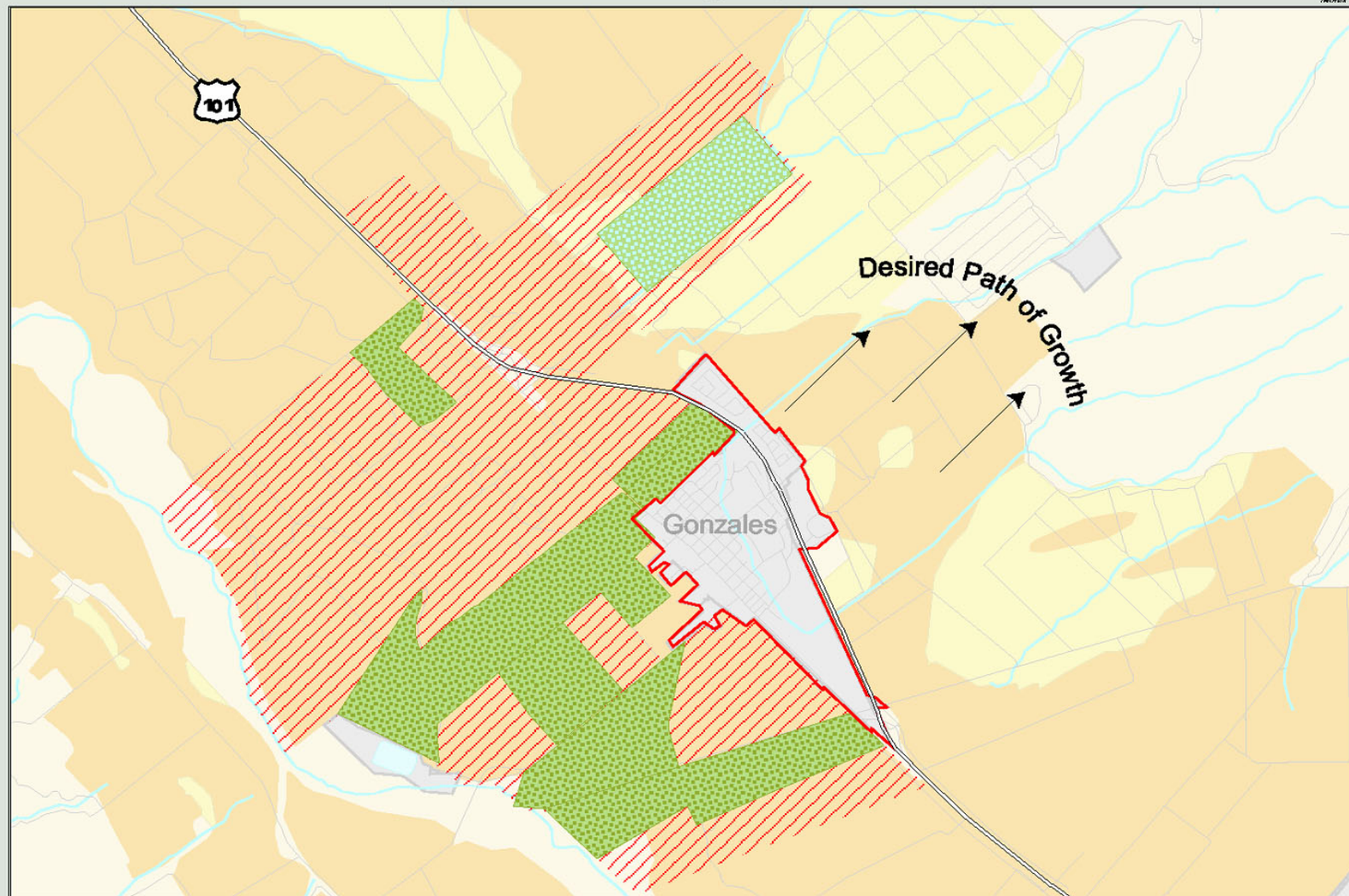


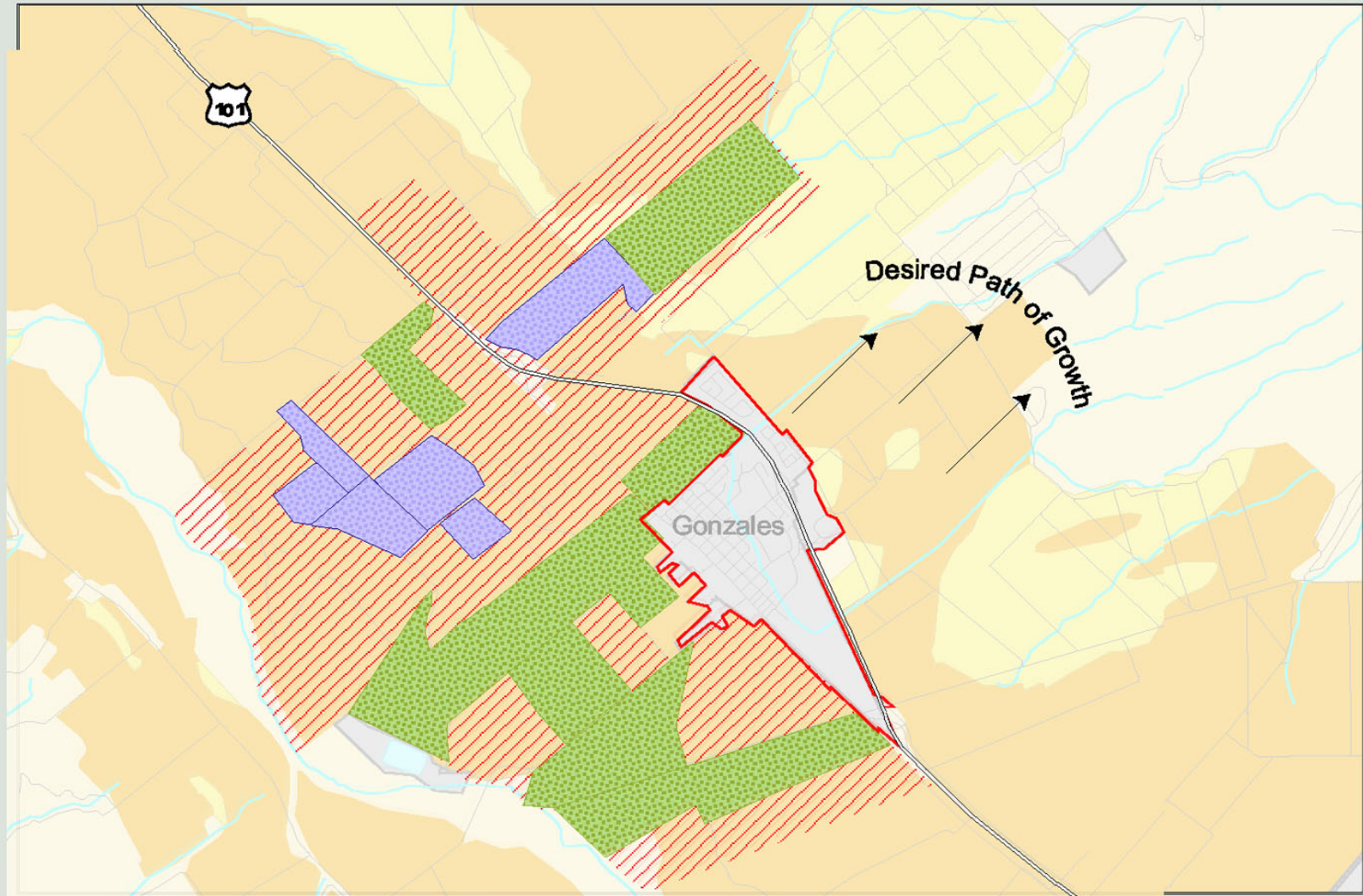
















For more information:

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See the Program's website:

www.conservation.ca.gov/dlrp/cfcp/

Email: CFCP@conservation.ca.gov

Phone: 916.324.0850

Thursday, January 18, 2007
Santa Cruz Public Library
1:00 p.m. to 4:00 p.m.



Affirmative Agricultural Easements

Coastal Agricultural Protection Workshop Series

California Coastal Commission and California FarmLink

About California FarmLink

- Non-profit
- Mission to connect beginning farmers with opportunities to obtain long-term tenure and protect farmland
- We were contacted in 2005 by Commission staff
- We're very impressed with the degree to which they researched options to protect farmland
- Excited about the possibility of setting a precedent for ensuring the continued productive use of land



How do Easements Fit Into a Farmlink?

- A donated easement can offset taxes due to lease income
- Sale of an easement can lower the cost of the property at the time of sale in order to buy out off-farm heirs or retiring generation
- Sale of an easement can serve as a small farmer's down payment

Tenure and Small Farmers

- Most small farmers in coastal California cannot purchase land without a conservation easement (Values driven by estate buyers or developers.)
- With easements, many purchases become feasible
- Still, a lease is often the most viable or even the preferable option if a few conditions are met.

Elements for an Attractive Lease on Easement Protected Land Include:

- Long-term tenure i.e. 5 year renewable
- Infrastructure: i.e. well, barn
- Availability of affordable housing

FarmLink's Role After an Easement Has Been Placed on the Land

- Identify Lessees
- Assist with drafting agricultural leases
- Assist with lessee review of leases
- Assist with selecting suitable farmer/rancher tenants
- Lending to lessees for key infrastructure (\$50,000 limit for pumps etc.)

Why Are We Interested?

- Researching best practices of local governments and other agencies in terms of facilitating leases to beginning farmers
- Unique opportunity to move towards a recognition of the qualitative difference between protecting land for open space and guaranteeing a future that includes productive agriculture

Standard Language: Landowner Can Not Develop

- Development usually restricted or forbidden
- Out buildings restricted in number and location
- Limit the size of single family house to ensure farmer not priced out of the market



Affirmative Clauses Call for Continued Farming



Require: farming activities be maintained on the land

May Require: specific crops; or specific cultivation techniques

What is the impetus for affirmative easement language?

- Farmer landowners concerned about their legacy
- Land trusts and their funders concerned about their mission in relation to agriculture
- Government agencies with mandates to promote or protect agriculture

What is the impetus for affirmative easement language?

- There is a difference between not developing and farming productively
- Some felt they were protecting the tradition of a family farm, while not realizing that the easement could result in a trophy home with no production



Scenarios Where A Client May Desire the Affirmative Language

- Desire to ensure productive operation instead of open space (not a “gentleman” farmer)
- Investors want to know they are supporting food production, not a rural residence

Development of Sample Easement with Affirmative Language

\$ Support from Dept. of Conservation & USDA

- Researched 3 known affirmative easements in California**
- Provided professional development training to attorneys, land trust staff and accountants**
- Qualified attorneys reviewed**
- Peer review, changes made**
- A work in progress (Does not reflect new affirmative easements used in Monterey & Marin)**

Striking a Balance



- No land owner likes to have regulations come between them and their dream home
- Our mission and part of the commission's mandate is to make sure that the public interest is considered
- Staff have creatively developed conditions around the type of easement and requirements to lease that achieve this

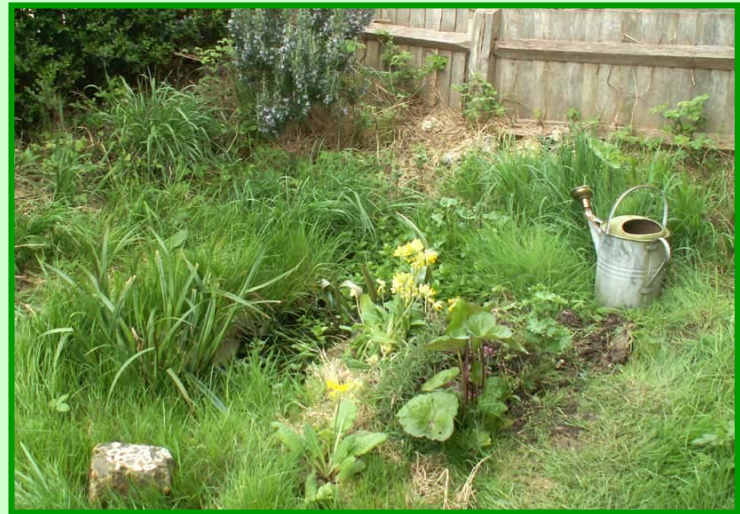
Pros of an Affirmative Clause

- Provide farmer with a more clear idea of the legacy they leave
- Encourages easement holding groups to facilitate farm transitions
- Requirement for organic farming etc. may advance land trust's larger mission

Issues That Need to Be Addressed

How does a monitoring agency confirm a serious effort to farm?

Planting a garden or buying a few sheep does not make a farm or ranch!



Alternative Solutions:

1. Portion of income comes from farming
2. Productivity comparison to county average

Issues That Need to Be Addressed

What if someone has a bad year, or there is a draught?

What if someone is seriously injured or ill?

**THE SAMPLE EASEMENT PROVIDES
MEANS TO HANDLE EACH SCENARIO
AND IS AVAILABLE TO THE PUBLIC**

Importance of Multiple Uses

Recommendation:

Easements should be drafted to describe all applicable multiple purposes that can support an easement (agriculture, scenic beauty, open space, even historic protection). All conservation values can then be protected if enforcement is needed.

Three Approaches for Protecting Agricultural Land

<i>Approach</i>	<i>Holder of Easement</i>
<i>Traditional easement language</i>	Land trust or other traditional easement holder
<i>Affirmative Easement Language</i>	Land trust or other traditional easement holder
<i>Transfer of Farming Rights</i>	Farmer/Rancher or their business entity (i.e. LLC)

Transfer of Farming Rights

- Ensures maximum protection of farmers' rights
- Creates equity that a farmer can sell on retirement (or earlier exit strategy)
- Analogy is the easement for a driveway or power line; or transfer of mineral or water rights

Transfer of Farming Rights

- Farmer can borrow \$ to leverage land trust resources in acquiring property
- Single parcel properties or those with certain zoning designations may not have agricultural conservation easement value (no development rights to extinguish)
- Farmer more likely to invest in land

Thank You to Our Supporters!

California FarmLink receives major support for its work from:

- **The Columbia Foundation**
- **The Western SARE**
(Sustainable Agriculture Research & Education Program)
- **Wells Fargo Foundation**
- **Charles S. Levine Foundation**